

**United States District Court, Northern District of Illinois**

Name of Assigned Judge or Magistrate Judge	Philip G. Reinhard	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 50363	DATE	2/9/2004
CASE TITLE	Tell vs. Job Smart		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

**MOTION:**

1000

**DOCKET ENTRY:**

(1)  Filed motion of [ use listing in "Motion" box above.]

(2)  Brief in support of motion due \_\_\_\_\_.  
*[Signature]*

(3)  Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.  
*[Signature]*

(4)  Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(5)  Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(6)  Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(7)  Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.

(8)  [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.

(9)  This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
 FRCP4(m)     General Rule 21     FRCP41(a)(1)     FRCP41(a)(2).

(10)  [Other docket entry] For the reasons stated on the reverse memorandum opinion and order, the court grants defendant's motion for summary judgment [#13] and dismisses this cause in its entirety.  
*[Signature]*

(11)  [For further detail see order on the reverse side of the original minute order.]

(11) ■ [For further detail see order on the reverse side of the original minute order.]

	No notices required, advised in open court.			Document Number
	No notices required.		number of notices	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		FEB 10 2004	
	Notified counsel by telephone.		date docketed	
	Docketing to mail notices.		<i>AJW</i>	
<input checked="" type="checkbox"/>	Mail AO 450 form.		docketing deputy initials	
<input checked="" type="checkbox"/>	Copy to judge/magistrate judge.		2-10-04	date mailed notice
LC		courtroom deputy's initials	Date/time received in: central Clerk's Office	<i>AJW</i>
				mailing deputy initials

## MEMORANDUM OPINION AND ORDER

Plaintiff, Cleophus Tell, filed a pro se complaint on Tuesday, September 24, 2002, alleging a violation of the Americans With Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., based on his termination from his job. Plaintiff was subsequently appointed stand-by counsel.

Defendant filed a combined motion to dismiss pursuant to Fed. R. Civ. P. 12b(6) and motion for summary judgment under Fed. R. Civ. P. 56. Defendant asserted that it is entitled to summary judgment because plaintiff failed to file a charge of discrimination with the EEOC within 300 days of his termination and because he failed to file his complaint in this court within 90 days of receiving actual notice of his right to sue from the EEOC. Defendant submitted factual matters outside the complaint in support of its motion, including a document from the U.S. Postal Service showing that plaintiff received his right-to-sue letter on June 24, 2002. The court will consider the motion as one brought under Rule 56.

In his response to defendant's motion, plaintiff submitted evidentiary matters and also admitted that he received the right-to-sue letter on June 24, 2002. He contended that he filed his complaint within 90 days of receiving the notice, however, asserting that "[w]ith the holiday and Sunday being the 22<sup>nd</sup> of September, the 24 of September would be ninety days."

In its reply brief, defendant essentially abandons its argument that plaintiff did not file his initial charge with the EEOC in a timely manner and relies on its contention that the complaint was not timely filed here.

Under the ADA and Title VII, a plaintiff must file suit within 90 days from the date the plaintiff receives actual notice of his right to sue. Houston v. Sidley & Austin, 185 F. 3d 837, 838-39 (7<sup>th</sup> Cir. 1999). Based on both plaintiff's admission and the other evidence, it is undisputed that plaintiff here received actual notice of his right to sue on June 24, 2002.

Based on the date of June 24, 2002, plaintiff had until Monday, September 23, 2002, to file his complaint. Under Rule 6(a), when the time period for filing is 11 days or longer, intermediate Saturdays, Sundays, and legal holidays are included except if the last day of the period falls on a Saturday, Sunday, or legal holiday. In that event, the filing period runs to the next day which is not a Saturday, Sunday, or legal holiday. Fed. R. Civ. P. 6(a). In this case, the last day of the 90-day period fell on Sunday, September 22, 2002. Thus, plaintiff had until the next day, Monday, September 23, 2002, to file his complaint. He did not file, however, until Tuesday, September 24, 2002. Accordingly, his complaint is time-barred.

Curiously, plaintiff asserts that a holiday extended the 90-day filing period. For that to have been the case, Monday, September 23, 2002, would have to have been a legal holiday as any other legal holiday during the 90-day period would have counted toward the 90-days. The court is not aware of any legal holiday occurring on Monday, September 23, 2002. Therefore, the court grants summary judgment in favor of defendant and dismisses this cause in its entirety.